

**The Association of Bay Area Governments and  
ABAG Finance Authority for Nonprofit Corporations  
Internal Investigation and Forensic Review  
Investigative Report**

Issued by:



**O R R I C K**



**F T I**<sup>TM</sup>  
**CONSULTING**

**December 15 2015**



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## I. Introduction and Background

In December 2014, the City and County of San Francisco (“San Francisco”) determined that money was missing from a bank account associated with the One Rincon Hill residential complex project. San Francisco discovered that just under \$1.3 million had been wired to a bank account related to an entity called Urban West for Rincon Developers. Staff members in the Mayor’s Office of Housing and Community Development contacted the ABAG Finance Authority for Nonprofit Corporations (“FAN” or the “Authority”), which had issued bonds to finance a portion of the One Rincon Hill project. In January 2015, news stories reported that the money appeared to have been misappropriated by Clarke Howatt, employed by the Association of Bay Area Governments (ABAG) as its Public Finance Director and serving as the FAN Secretary. Howatt resigned in late January 2015, and FAN and ABAG commenced a review into the potential theft. FAN and ABAG later retained Orrick, Herrington, & Sutcliffe (“Orrick”) to lead the investigative effort. Orrick retained FTI Consulting, Inc. (“FTI”) to assist in the investigation and forensic review.<sup>1</sup> In March 2015, Howatt provided basic information to FAN and ABAG regarding four instances in which he misappropriated funds from bank accounts associated with two development projects financed with municipal bonds: One Rincon Hill, in San Francisco, and Windemere Ranch, in Contra Costa County. The Investigation Team was tasked with (1) developing an understanding of the facts and circumstances surrounding those defalcations; and (2) testing to determine whether other thefts had occurred.

### A. ABAG and FAN

The Association of Bay Area Governments (ABAG) is a joint powers authority<sup>2</sup> created in 1961 by the cities and counties of the San Francisco Bay area to address regional issues. ABAG is governed by a 35 member Executive Board comprised of elected officials from local jurisdictions. In the early 1980s, ABAG instituted a pooled public financing program using certificates of participation to fund projects by member jurisdictions. This program evolved and began using more sophisticated pooling mechanisms to support projects by member jurisdictions. ABAG has also issued municipal bonds on behalf of its members and other public agencies within the region.

The ABAG Finance Authority for Nonprofit Corporations (FAN) is a joint powers authority created in 1990 by ABAG and local jurisdictions in the San Francisco Bay Area to assist nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest. FAN is governed by a Board of Directors comprised of representatives of its members and a five person Executive Committee of the Board. Membership in FAN includes local jurisdictions throughout California. ABAG provides support services to FAN pursuant to the FAN joint powers agreement and FAN has no employees. The FAN bylaws designate the Executive Director of ABAG as the FAN President, the Finance Director of ABAG as the FAN Chief Financial Officer (CFO) and the Financial Services

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<sup>1</sup> Orrick and FTI will be collectively referred to as “the Investigation Team” or “the Team” throughout this report.

<sup>2</sup> A joint powers authority is an entity created under a joint powers agreement between two or more public agencies, according to California Government Code Section 6500 *et seq.* A joint powers authority can exercise any powers common to its member entities. The powers most relevant to this report that ABAG and FAN exercise as joint powers authorities are the ability to issue bonds and administer special tax districts.



Director of ABAG as the FAN Secretary. In the balance of this report, all references to the designated officers will use their FAN titles and all references to others providing services to FAN will use their ABAG titles/status.

## **B. Community Facilities Districts and Assessment Districts**

The Windemere Ranch (“Windemere”) and One Rincon Hill (“Rincon Hill”) projects discussed herein were both financed in part with municipal bonds. Windemere Ranch was financed with a combination of community facilities district (“CFD”) bonds and assessment district bonds. One Rincon Hill was financed with CFD bonds but no assessment district bonds. These financing vehicles each depend upon identifying specific real property parcels within a defined district and imposing on those parcels a special tax or comparable lien, payable on parity with real property taxes. The legal structures underlying these districts and the related bond financings are extremely complex; this section provides a brief overview of CFDs and assessment districts for context.

A community facilities district (“CFD”) is a legally defined area of real property formed under the Mello-Roos Community Facilities Act of 1982 to levy and collect a special tax. The special taxes collected are used to finance facilities, services, and improvements within the CFD. In addition, rather than waiting for special tax revenues to accumulate to fund facilities and capital improvements on a “pay as you go” basis, a CFD can issue bonds secured by future special tax revenues, thereby raising up-front capital. Special tax revenues may be used to pay debt service on bonds issued to support the CFD. There are therefore two primary sources of funds to pay for activities associated with a CFD: bond proceeds, which are received at the time of bond issuance, and special tax revenues collected on an ongoing basis (to the extent not needed to pay debt service on bonds). A series of agreements and other documents created when the CFD is formed and bonds are issued outline key aspects of the CFD and bonds. For example, the documents outline the roles of the various entities relevant to the project (e.g. corporate Trustee, fiscal agent), the bond repayment schedule and the types of improvements that will be made in the CFD.

An assessment district is similar in many ways to a CFD, in that it involves creation of a district and the imposition of a lien on real property to fund certain improvements and related costs. For these purposes, the principal difference between an assessment district and a CFD is that each parcel in an assessment district has placed upon it a special assessment lien in a fixed amount that can never change. The assessment may be amortized (spread out) over time if bonds are issued, in which case the parcel pays the exact amount needed to repay the bonds and related costs; no more and no less. By comparison, the amount of the special tax collected in a CFD may change from time to time according to the “Rate and Method of Apportionment” established at the time the CFD is created. Both CFDs and assessment districts require voter approval to be formed.

The Windemere Ranch development had several assessment districts and a single CFD established over time, as well as numerous bond issuances and refinancings, beginning in approximately 1999. FAN or ABAG served as the bond issuer for these projects, and had an ongoing role in administering the districts. The One Rincon Hill project had one CFD and bond issuance. FAN served as the bond issuer for this project.

## II. Executive Summary of Findings

In March 2015, Howatt provided basic information to FAN and ABAG regarding four instances when he misappropriated funds from certain bank accounts associated with FAN bond issuances associated with two projects: Rincon Hill and Windemere. The Investigation Team sought to understand the facts and circumstances surrounding those defalcations.<sup>3</sup> In addition, the Team developed investigative procedures to test if additional defalcations had occurred.

Based on the investigative procedures described in this report, the Investigation Team noted no evidence of defalcations other than those Howatt described. The Investigation Team also saw no evidence that Howatt acted in concert with others. The defalcations, which are described in more detail in Appendix A, were as follows:

**Defalcation No. 1:** On or about June 23, 2011, Howatt fraudulently caused the transfer of \$1,098,712.48 from Union Bank account #XXXXXX2504, associated with the Windemere project.

**Defalcation No. 2:** On or about June 24, 2014, Howatt fraudulently caused the transfer of \$1,225,000.00 from a Bank of New York Mellon (“BNY”) account #XXX096 associated with the Windemere project.

**Defalcation No. 3:** On or about August 12, 2014, Howatt fraudulently caused the transfer of \$1,296,340.66 from Union Bank Account #XXXXXX4410, associated with the San Francisco Rincon Hill project.

**Defalcation No. 4:** On or about January 26, 2015, Howatt fraudulently caused the transfer of \$256,082.07 from a Bank of New York Mellon Account #XXX096 associated with the Windemere project.

The three bank accounts that Howatt targeted fall into two different categories: improvement accounts and depository accounts. The improvement accounts, which relate to two different projects (Windemere and Rincon Hill), are trust accounts that hold proceeds of bonds issued to fund improvements within the special districts in question. A depository account is not a trust account and does not contain bond proceeds. Rather, depository accounts contain special tax revenues that have been collected according to the Rate and Method of Apportionment (one of the bond issuance documents), which may then be used to pay debt service on the bonds and administrative and other costs associated with the districts. The June 2011 defalcation (Account #XXXXXX2504) and the August 2014 defalcation (Account #XXXXXX4410) were from improvement accounts. The June 2014 and January 2015 defalcations (both from Account #XXX096) were from a depository account.

Howatt utilized similar methods to accomplish all four defalcations. In all cases, he created fictitious entities that mimicked the actual names and characteristics of a developer related to each project. He then crafted requisition documents to make it appear that the developer was seeking reimbursement for legitimate bond-related expenses. In the case of the

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<sup>3</sup> With regard to the Windemere project, the Investigation Team also examined bank accounts associated with bonds issued by ABAG.



Rincon Hill transaction defalcation, he also took steps to amend the original Indenture for the Bonds, as discussed below.

In the case of the defalcation from the Rincon Hill fund, Howatt worked with an outside law firm to have a supplemental indenture drafted that allowed FAN, through Howatt, to request reimbursement for bond-related expenses without any involvement from San Francisco. He represented to the outside law firm and to ABAG/FAN employees that the supplemental indenture was required because when an agreement relating to the project expired, there was ambiguity as to who could draw on the funds, and that needed to be addressed. He also represented that the amendment was needed to avoid jeopardizing the tax-exempt status of the bond. By creating fictitious documents purporting to be from the legitimate developer, Howatt was able to pass documents executing the defalcations through internal controls. For each theft, Howatt provided the fictitious documents to a member of the Finance staff for review, who reviewed and approved the disbursements after discussion with Howatt. As the FAN Secretary and ABAG Public Finance Director, Howatt had a position of authority and trust at FAN and ABAG, which also contributed to his ability to execute the thefts. Howatt also used the specter of a potential IRS audit and subsequent loss of the tax-exempt status of the CFD bond to provide additional support for some of his actions.<sup>4</sup>

### III. Scope and Investigation Procedures

The investigation focused on both understanding the facts and circumstances regarding the four confessed incidents and testing to determine if additional thefts had occurred. In the early phases of the investigation, the Team determined that the bond transactions Howatt targeted were either CFD or special assessment district bonds, where FAN played a role in the disbursement process or had the ability to direct the flow of funds in related bank accounts. FAN and ABAG provided the Investigation Team with a list of all bond issuances by FAN and all ABAG issuances related to Windemere. From this list, the Investigation Team selected bond transactions for two categories of testing and review: (1) all outstanding (as of April 8, 2015) CFD and assessment district bonds for transaction testing and review; and (2) a selection of non-CFD or assessment district bonds to review transaction documentation to ensure that FAN could not direct or approve disbursements or otherwise access funds in related accounts.<sup>5</sup>

To support its objectives, the Investigation Team performed a number of procedures, including:

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<sup>4</sup> The rules surrounding tax-exempt bond financing are extremely complex. While Howatt was not a tax lawyer and was in no way truly expert in this area, he was legitimately able to hold himself out within ABAG and FAN as the resident authority in such matters.

<sup>5</sup> Conduit financing has a specific meaning in the municipal bond market: *a state or local government issues bonds and provides the bond proceeds to another party (frequently called a conduit borrower) who takes responsibility for repaying the bonds.* The conduit issuer is only obligated to make payments on the bonds to the extent it receives funds for that purpose; therefore the issuer's credit is not part of the transaction and the issuer is not a "real party in interest" to the economic substance of the transaction. Rather, the conduit issuer's role is to provide tax-exemption or tax credits related to the bonds or to otherwise provide access to the municipal bond market to the borrower. The conduit issuer typically has no control over any funds or accounts because it is not a real party in interest to the financial transaction.

Multiple interviewees said that FAN does not have any access to or ability to direct funds in its conduit financings. To confirm this was the case, the Investigation Team reviewed the bond issuance documents for a sample of transactions. In all conduit financings reviewed, FAN did not have any control over funds or accounts.



- Collected 244,141 documents comprising 535GB of electronic data from five custodians<sup>6</sup> and shared drives, which included:
  - Emails;
  - Documents stored on desktop and laptop hard drives; and
  - Documents stored on FAN's shared drive.
- Developed and applied search terms to the collected data and reviewed the resulting documents (approximately 13,400 documents).
- Examined relevant bond-related documents, including but not limited to:
  - Bond Indenture documents;
  - Bond bank account statements and statements of account activity;
  - Requests submitted by FAN requesting the withdrawal or transfer of funds in bond accounts and other related supporting documents.
- Conducted informational interviews of certain current and former FAN/ABAG officers, employees, bond counsel, consultants, and trustees.
- Conducted a background check and reviewed public and proprietary data sources to obtain information on Howatt and associated individuals and entities.
- Tested bond transactions for select withdrawals, transfers and disbursements from CFD and assessment district bond bank accounts<sup>7</sup> that exceeded \$25,000 and occurred during the period between July 1, 2009 and January 31, 2015.<sup>8</sup>

#### IV. Summary of Defalcations

The sections below discuss the facts surrounding four defalcations:

Bank Account Type	Transaction	Approx. Date of Defalcation	Amount	Bank
Improvement	Windemere	6/23/2011	\$1,098,712.48	Union
Depository	Windemere	6/24/2014	\$1,225,000.00	BNY
Improvement	Rincon	8/12/2014	\$1,296,340.66	Union
Depository	Windemere	1/26/2015	\$256,082.07	BNY

<sup>6</sup> See Appendix D for the list of custodians.

<sup>7</sup> The Investigation Team did not examine disbursements from bond repayment accounts which are used to repay principal and pay interest to bond holders.

<sup>8</sup> The Investigation Team set this time period to examine at least five years of activity prior to Howatt's resignation and departure from ABAG and FAN. The Team set this limitation based on the understanding that if facts were uncovered suggesting a longer period should be reviewed, the scope would be reexamined. Based on the review to date, the Investigation Team has not uncovered any information that supported broadening the scope of transaction testing.



### A. Defalcation No. 1: Windemere Improvement Account (June 2011)

The first defalcation occurred in June 2011; Howatt stole \$1,098,712.48 by submitting false documentation on forged letterhead showing a developer request for disbursement. As part of this first defalcation, Howatt created a fictitious entity, the Windemere BLC Land Company, LLC, and two fictitious principals in that entity, Nick Poquette and David Cordero. *See e.g.*, ORR000368919. Howatt stated that he mimicked the names of legitimate companies and then created characters using a fake name and the name of an individual who previously worked at Lennar, one of the Windemere developers. He said that he took steps to make the fictitious company appear legitimate, including creating letterhead and establishing a “virtual office” where an individual would answer the phone in the name of the fictitious entity, Windemere BLC Land Company, LLC. Howatt explained that he saw the opportunity to take money because there had been no draws on the accounts at issue in “years.”

On June 20, 2011, the ABAG Administrative & Compliance Officer emailed Nick.Poquette@Lennar.com, copying Howatt: “Per Clarke’s request, I am sending you the account balances for Windemere payment request.” She then listed the balances of three Windemere accounts as follows:

Surplus Fund:	\$194,844.21
07A&B Improvement Fund:	\$903,783.88
04-2 Improvement Account:	\$84.39

ORR000368906. These amounts total \$1,098,712.48, the amount of Howatt’s first defalcation. As previously noted, Howatt told the Investigation Team that “Nick Poquette” was an alias name and that he created an email account that appeared to be from a Lennar account.

Howatt created an “Officer’s Certificate,” which was a requisition document whose form was generally outlined in the underlying bond documents, and presented it to the Chief Financial Officer<sup>9</sup> of FAN for signature. The Chief Financial Officer said he signed the documents based on Howatt’s representations that the disbursements were needed to support improvements made in the districts. The Officer’s Certificate directed Union Bank to transfer the funds from the Windemere Improvement bank account to a Wells Fargo bank in the name of “Windemere BLC Land Company, LLC,” the entity created and controlled by Howatt. ORR000368933\_0001.

Documents show that prior to the June 2011 defalcation, Howatt took steps to limit his colleagues’ access to the Windemere-related bank statements. In March 2011 Howatt requested that “BNY Statements for ABAG property tax districts” be sent to his attention, not to the Assistant Financial Services Director, and BNY Mellon complied. ORR000283300. The Assistant Financial Services Director recalled that she had previously used the statements to note interest earned in the Windemere bank accounts, but she stopped around this time because she no longer had access to the statements.

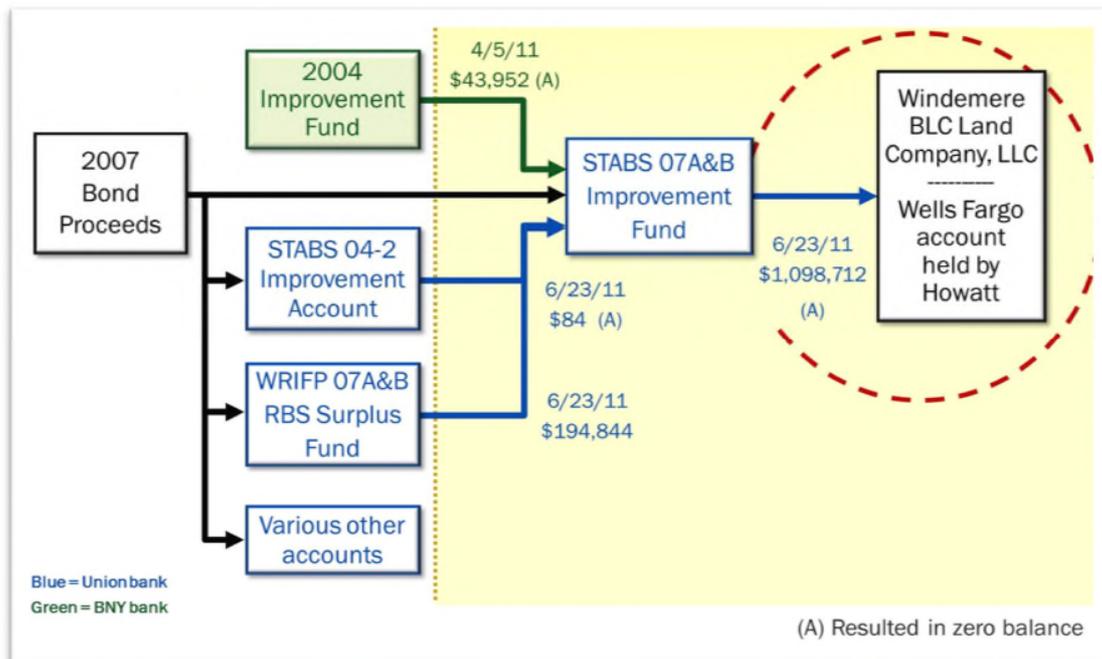
Around that same time, emails show that Howatt posed questions to a Vice President at BNY Mellon Corporate Trust in Los Angeles regarding balances in certain Windemere accounts

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<sup>9</sup> The individual who formerly served as the Chief Financial Officer, and signed three of the four false documents that Howatt prepared, is no longer at ABAG or FAN.

and where certain funds in the accounts should be sent based on bond documents. ORR000283151. This conversation, which took place in part via email in March 2011, appears to have been the precursor to Defalcation No. 1, which occurred on or around June 23, 2011. Howatt instructed BNY Mellon to transfer some funds from the depository account to the Improvement Account at Union Bank. See chart below. Howatt also wrote to BNY Mellon “NOT to send the funds to the Agency (ABAG) but rather to the Developer using a requisition.” *Id.* Howatt later created and sent the “Officer’s Certificate” discussed above.

The chart below shows the flow of funds related to this defalcation.

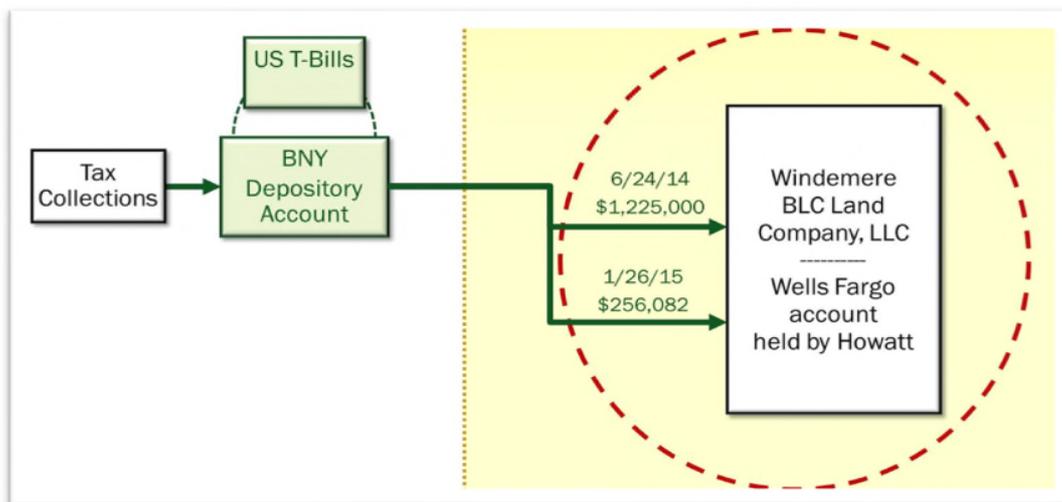


## B. Defalcation No. 2: Windemere Depository Account (June 2014)

In June 2014, Howatt created false documentation to cause transfer of \$1,225,000 from a BNY depository account. The method for this theft was similar to that used in June 2011. At Howatt’s direction, \$1,225,000 was transferred from a BNY depository account to a Wells Fargo bank account in the name of “Windemere BLC Land Company, LLC,” which was a fictitious entity created by Howatt. The requisition document was a letter with detailed instructions addressed to a Vice President at BNY Mellon Trust Company in Los Angeles. Similar to the first defalcation, the letter followed the general language included in the bond transaction documents relating to these types of disbursements. Howatt presented the letter to the Chief Financial Officer of FAN, who signed the letter based on Howatt’s representations. CTRL0001. In this second defalcation, Howatt directed funds to be transferred from the Windemere depository account at BNY Mellon to a bank account held by Howatt. The depository account was not a trust account, but was an account containing surplus funds from which FAN would make payments associated with the administration of the districts and the bonds.

Howatt stated that he performed some calculations and thought there was sufficient money in the account to allow him to fraudulently remove the \$1,225,000 without anyone noticing. He executed this defalcation before the bonds were refinanced in 2014. He explained that he used a virtual office and a bank account that he controlled that had a Windemere developer-related name, similar to the first defalcation.

The chart below shows a basic outline of the flow of funds related to this defalcation and to Howatt’s fourth defalcation, which is discussed in Section D below. The transfers described below are those immediately relevant for context of these defalcations. For a broader description of the relevant Windemere accounts, see Appendix B.



### C. Defalcation No. 3: Rincon Hill Improvement Account (Aug. 2014)

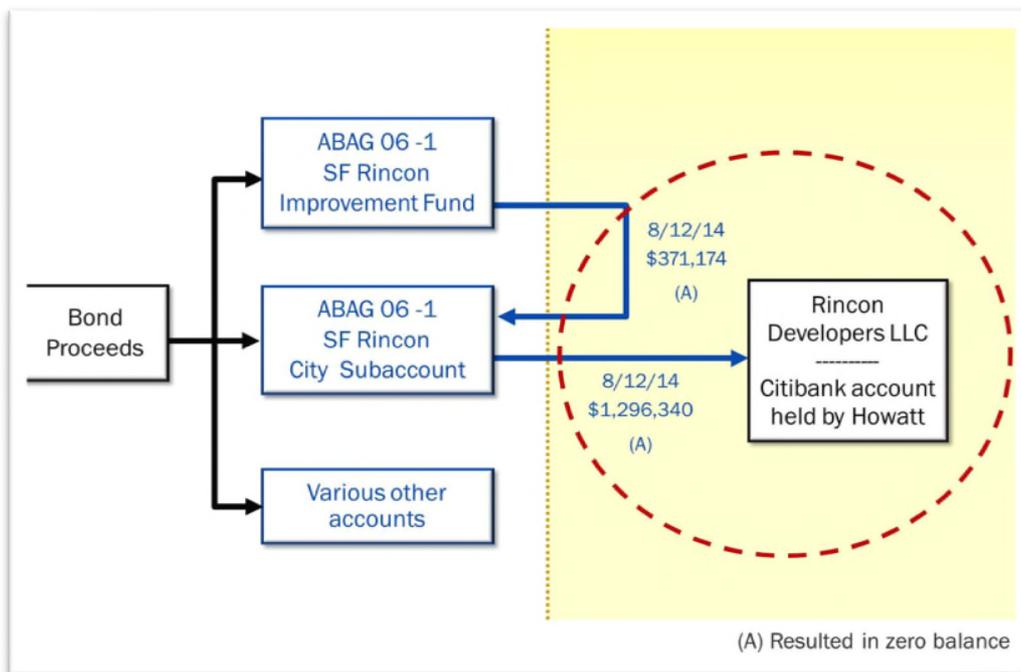
The third defalcation occurred in August 2014 and targeted an improvement bank account associated with the Rincon Hill project. This Rincon Hill improvement account was governed by a Joint Community Facilities Agreement between FAN and San Francisco, such that, during the period of expected construction of the bond-funded improvements, San Francisco’s approval and direction was required for disbursements from improvement accounts. As of the date of the Rincon Hill defalcation, this agreement had expired, leaving some ambiguity as to how funds could be withdrawn from the improvement account, which still had a balance in it. Howatt enlisted a municipal bond law firm that was not the original bond counsel on the Rincon Hill transaction to draft a supplemental indenture that would allow FAN to approve disbursements and direct money from the improvement account. ORR000175097, ORR000175097\_0001. Howatt told the law firm, ABAG/FAN staff, and the FAN Executive Committee that the amendment was required because if the funds then on deposit in the account remained unspent, there would be IRS penalties or the tax status of the bond could be revoked.

Howatt presented the supplemental indenture to the FAN Executive Committee during a meeting on July 16, 2014, where it was approved. After the supplemental indenture was executed (ORR000366504\_0001), Howatt crafted a disbursement request addressed to a Vice President at Union Bank, and presented it to the Chief Financial Officer of FAN for signature,

who signed it based on Howatt’s representations. The request was dated August 11, 2014, and directed Union Bank to transfer \$371,174 from the main improvement fund to the subaccount for the city and disburse the new balance of \$1,296,340.66 from the subaccount to a Citibank bank account in the name of “Rincon Developers LLC,” which was a fictitious entity created by Howatt. ORR000366506\_0001.

This first requisition attempt was rejected because Union Bank required a statement in the request that “such amount is for payment or reimbursement of a cost that relates to the Project and a statement that no portion of the amount requested to be disbursed was set forth in any prior request for withdrawal from the Rincon Hill Community Improvements Account or the City Subaccount, as applicable, by the Authority or by the City pursuant to the Joint Community Facilities Agreement.” ORR000291913. The following day, August 12, 2014, Howatt submitted to Union Bank a revised requisition that included the requested certification with no other substantive changes. ORR000366510\_0001.

In the third defalcation, Howatt directed funds to be transferred from the Union Bank Rincon Improvement Fund/SF Rincon City Subaccount to a bank account held by Howatt. The chart below shows the flow of funds related to this defalcation.



#### D. Defalcation No. 4: Depository Account (Jan. 2015)

In January 2015, Howatt again targeted the Windemere depository bank account held at BNY Mellon. The requisition document for this defalcation was a January 23, 2015 letter with detailed instructions addressed to BNY Mellon Trust Company. He presented it to the ABAG



Assistant Finance Director,<sup>10</sup> who signed the letter based on Howatt's representations. ORR000292645\_0002. The letter directed BNY Mellon to redeem the investments in the depository accounts to cash and wire \$256,082.07 to a Wells Fargo bank account in the name of "Windemere BLC Land Company, LLC," which was a fictitious entity created by Howatt. *Id.*

## V. Disbursements Testing Procedures

The Investigation Team did not uncover any evidence through document analysis or interviews to suggest that additional thefts took place. To further confirm this, the Investigation Team selected several disbursements from CFD and assessment district accounts for testing. These further disbursement testing procedures also did not uncover any evidence of additional thefts.

- The Investigation Team obtained a history of disbursements, withdrawals, and transfers ("Account Activities") from trustee and depository accounts relating to the CFDs and assessment districts.
- Account Activities were selected for testing based on the dates they were executed and the dollar amounts at issue.
- Account Activities selected for analysis consisted of:
  - Administrative fees;
  - Disbursement of improvement funds to third parties;
  - Payments for Cost of Issuance fees;
  - Transfers from BNY to Union Bank.
- The Investigation Team obtained supporting documents for all of the Account Activities that were selected for testing, including:
  - FAN/ABAG bank statements evidencing receipt of administrative fees from bond accounts;
  - Union Bank statements evidencing receipt of funds transferred from BNY Mellon bond accounts;
  - Signed requisition forms that were submitted to the Trustees by FAN or other parties;
  - Invoices, copies of checks, and wire transfer authorization forms, as applicable.
- The Investigation Team utilized a confirmation process to verify the dates and dollar amounts of certain disbursements to third parties.
- Based on this testing, the Investigation Team determined there were no indications or concerns of additional defalcations.

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<sup>10</sup> The Assistant Finance Director said that she signed the request because the Chief Financial Officer was out of the office that day, and that she was often designated to sign in his absence.



## **VI. Conclusion**

As discussed herein, on four instances, Clarke Howatt fraudulently obtained funds from accounts associated with the Windemere and Rincon Hill projects. These defalcations are listed in Appendix A. Howatt was able to pass fraudulent documents through the internal control mechanism (specifically, review and approval of disbursements by the Chief Financial Officer or his designee) based on his position of power, authority, and trust, as well as his relative level of expertise in an esoteric area of finance. His colleagues generally referred to him as having a strong understanding of this complex area of finance, and relied on him to administer the bond financing programs. Following discovery of the thefts, FAN and ABAG took immediate steps to address its control environment, including hiring employees to fill vacated roles of ABAG Finance Director/FAN CFO and ABAG Financial Services Director/FAN Secretary. The entities continue to review and revise internal control processes relating to the administration and oversight of the public finance program.



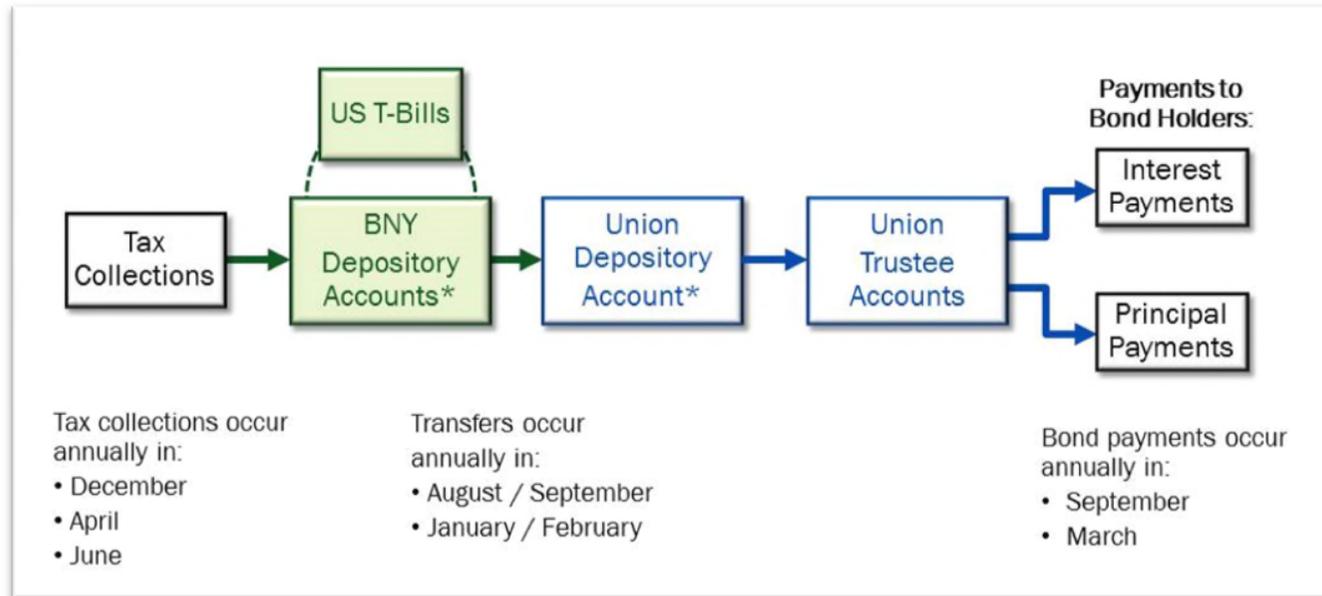
## Appendix A – Detail of Defalcations

Funds Disbursed from							Funds Disbursed to				
Txn #	Date of Withdrawal	Amount	Project or Bond Name	Trustee	Acct #	Acct Title	Bank	Routing #	Acct #	Description per Trustee Docs	Payee name on fictitious requisition form
1	6/23/2011	\$1,098,712.48	ABAG FAN CFD No. 2004-2 (Windemere Ranch) Special Tax Bonds, series 2007B	Union Bank	XXXXXX2504	ABAG STABS 07A&B IMPROVMT FD	Wells Fargo	XXXXX0248	XXXXXX1552 (also lists XXXXXX8482 on W-9)	PER REQ #4 DTD 6/21/11 VARIOUS PUBLIC CAPITAL IMPROVEMENTS	Windemere BLC Land Company, LLC
2	6/24/2014	\$1,225,000.00	Windemere*	BNY Mellon	XXX096	ABAG WINDEMERE D/S DEPOSITORY ACCT	Wells Fargo	XXXXX0248	XXXXXX3079	WELLS FARGO BANK, NA ABA: XXXXX0248 5225403079 ABAG FINANCE AUTHORITY FOR NO TO BANK OF THE WEST/ABAG PER CLARKE J. HOWATT INSTRUCTIONS DTD 6/24/2014 PHONE: 510-464-7932 TRNDSP1406244243500 ITC: 000 PTC: 729 CP: B/C: ZERO DC: 00 TRN#: 141750012 ATH	WBLC (Windemere BLC Land Company, LLC)
3	8/12/2014	\$1,296,340.66	ABAG FAN Community Facilities District No. 2006-1 (San Francisco Rincon Hill) Special Tax Bonds, Series 2006 A	Union Bank	XXXXXX4410	ABAG 06-1, SF RINCON IMPROVE FUND (ABAG 06-1 ^SF RINCON CITY SUB)	Citibank	XXXXX1724	XXXXXX662	SEC 2.01(A) SUPP IND - REQUEST DTD 08/11/14	Rincon Developers, LLC (Urban West for Rincon Developers, LLC)
4	1/26/2015	\$256,082.07 <i>(included in funds seized from Howatt's accounts by the FBI)</i>	Windemere*	BNY Mellon	XXX096	ABAG WINDEMERE D/S DEPOSITORY ACCT	Wells Fargo	XXXXX0248	XXXXXX3079	WELLS FARGO BANK, NA XXXXX0248 ABAG FINANCE AUTHORITY FOR NON PROFIT 5225403079 INSTRUCTIONS DTD 1/23/15 FOR FISCAL YR 2014-2015 REIMB. COSTS, FEES, EXPENSE. DAVID CORDERO 949-623-8343	WBLC (Windemere BLC Land Company, LLC)

\* Documentation relating to these defalcations did not clearly indicate a bond issuance. This depository account was used in connection with the Windemere project, which was supported by several issuances over the years.

## Appendix B – Additional Background Regarding Windemere Accounts

To provide context for the Windemere defalcations, the chart below provides a high level overview of the flow of funds in the Windemere bank accounts. Tax collections are initially deposited into depository accounts at BNY Mellon, which FAN uses to hold funds that will be used to pay various costs associated with the districts and the bonds, including unpaid principal and interest on the bonds and administrative costs. The balance in those accounts is invested in U.S. Treasury bills, which earn interest over time. To facilitate payments to the Windemere bondholders, prior to principal and interest payments coming due, FAN transfers the necessary funds from the BNY depository accounts to a separate depository account at Union Bank. The funds are then transferred from the Union Bank depository account to the specific Trustee account (also at Union Bank) from which payments are made to bondholders.



\* Only the amount needed for payment of bond interest and principal is transferred from the principal BNY depository account to the Union depository account.



## Appendix C – Informational Meetings and Interviews

Members of the Investigation Team met with the following individuals during the course of the investigation. Meetings were held in person or telephonically. In some cases, members of the Investigation Team spoke with the individuals on multiple occasions.

### **ABAG/FAN<sup>11</sup>**

ABAG Executive Director/FAN President (Ezra Rapport)

ABAG Legal Counsel/FAN Acting General Counsel (Kenneth Moy)<sup>12</sup>

ABAG Financial Services Director/FAN Secretary (Clarke J. Howatt)

ABAG Former Finance Director/FAN Former Chief Financial Officer (Herbert Pike)

ABAG Interim Finance Director/FAN Interim Chief Financial Officer (Charles A. Adams)<sup>13</sup>

ABAG Interim Financial Services Director/FAN Interim Secretary (Peggy Caruso)<sup>14</sup>

ABAG Deputy Executive Director (Bradford Paul)

ABAG Assistant Finance Director (Chui Mun (“Susan”) Hsieh)

### **Trustees**

Vice President, MUFG Union Bank, N.A.

Vice President, The Bank of New York Mellon Trust Company, N.A.

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<sup>11</sup> The Investigation Team also sought to speak to Gloria Lin, who previously served as ABAG Administrative & Compliance Officer. Ms. Lin had retired in 2014 and declined to participate in a meeting.

<sup>12</sup> Appointed FAN Acting General Counsel effective February 3, 2015.

<sup>13</sup> Appointed to both positions effective April 6, 2015.

<sup>14</sup> Peggy Caruso was employed by ABAG/FAN in a different capacity from September 2000 to January 2013. Caruso became ABAG Interim Financial Services Director/FAN Interim Secretary following Howatt’s resignation in February 2015.



**Other**

Associate Director, NBS

Managing Director, Stifel, Nicolaus & Company, Inc.

Urban West Associates of San Diego

Partner, Quint & Thimmig LLP



## **Appendix D: Individual Custodians**

In addition to collecting shared server data discussed in Section III, the Investigation Team collected data from the following custodians:

ABAG Financial Services Director/FAN Secretary (Clarke J. Howatt)

ABAG Former Finance Director/FAN Former Chief Financial Officer (Herbert Pike)

ABAG Interim Financial Services Director/FAN Interim Secretary (Peggy Caruso)

ABAG Assistant Finance Director (Chui Mun (“Susan”) Hsieh)

ABAG Former Administrative and Compliance Officer (Gloria Lin)